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UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
New York, 12-30 July 1993

# LETTER DATED 28 MAY 1993 FROM THE CHAIRMAN OF THE DELEGATION OF CANADA TO THE CONFERENCE ADDRESSED TO THE CHAIRMAN OF THE CONFERENCE

At the end of the first (organizational) session of the United Nations Conference on Straddling Fish Stocks and Migratory Fish Stocks last April, you invited participants to send you by the end of May their thoughts and views on the major issues that should be addressed at the second (substantive) session next July. You undertook to review these in the preparation of a paper which you planned to circulate in advance of the July meetings, to facilitate a more structured and focused discussion.

I am now writing to convey our proposed objectives and approach. Let me say at the outset that we do not have in mind a reopening or continuation of the United Nations Conference on the Law of the Sea negotiations. We take the Law of the Sea Convention as our basic frame of reference. In conformity with the United Nations General Assembly's mandate adopted by the Conference, we seek the effective implementation of the relevant provisions of the Convention to deal with the urgent problems of critically depleted straddling fish stocks and highly migratory fish stocks on the high seas. That is our point of departure. In our view, these problems can only be properly addressed in the context of an effective regime of conservation and management for straddling fish stocks and highly migratory fish stocks on the high seas. Our objective is to see the establishment of such a regime as the outcome of the Conference. To be effective such regime must be workable and this entails binding obligations to make it work. In our view this should be done by an international convention. We would envisage such a convention setting out the necessary elements and measures for an effective regime of conservation and management, supported by effective surveillance and control and a dispute settlement mechanism. While Parties would be bound by the provisions of the convention, the measures to be implemented would need to be tailored to the particular geographic and fisheries characteristics of each region. Additionally, it should be recognized that developing countries could only be able to implement their obligations to the extent that their financial, scientific and technological capabilities allowed.

As a contribution to the preparation of your paper and to the forthcoming discussions, I enclose herewith our proposals on necessary components for an effective conservation and management regime. These are set out in separate papers as follows:

- Regional fisheries conservation organizations and arrangements;
- Technical assistance to developing countries;
- Conservation and management measures;
- Surveillance and control measures;
- Enforcement:
  - Flag State authorization;
  - Offences by vessels or nationals;
  - Port State enforcement;
  - Boarding, inspection and arrest on the high seas;
  - Enforcement against unregistered vessels;
  - Enforcement against vessels that conceal their identification;
  - International cooperation;
- Settlement of disputes and arbitration.

We would ask that these papers together with a copy of this letter be translated and distributed to Conference participants.

We will also be glad to distribute at the appropriate time additional proposed provisions relating to definitions and scope of application of the convention we have in mind, which should be limited to straddling stocks and highly migratory fish stocks on the high seas.

We would look to the Conference focusing on these key elements with a view to securing the broadest possible consensus, following which these could be translated into a legally binding text. I should emphasize that it would be important to establish consensus on the substance, before engaging in a discussion of the optimum legal format.

(Signed) A. R. A. GHERSON
Chairman of the delegation of Canada
to the Conference

Annex

ORGANIZATION OF WORK

List of issues

(Submitted by the delegation of Canada)

## I. REGIONAL FISHERIES CONSERVATION ORGANIZATIONS AND ARRANGEMENTS

States which participate in regional fisheries conservation organizations or arrangements shall take action, with due regard to the particular circumstances in individual regions, to have such organizations or arrangements:

(a) Adopt conservation and management measures;

(b) Adopt surveillance and control measures;

(c) Provide for compulsory and binding third-party settlement of disputes where overfishing or other harmful fishing practices are at issue.

## II. TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES

1. The ability of developing countries to fulfil their obligations is dependent upon their capabilities, including the financial, scientific and technological means at their disposal.

2. States should cooperate, at a bilateral, regional or global level, with the support of the Food and Agriculture Organization of the United Nations (FAO) and other international bodies, to provide assistance, including technical assistance, to developing countries. Such assistance should be provided, inter alia, in respect of conservation and management, surveillance and control and enforcement, thereby enhancing the ability of developing countries to obtain the full social and economic benefits from sustainable utilization of marine living resources subject to their jurisdiction.

## III. CONSERVATION AND MANAGEMENT MEASURES

Conservation and management measures:

(a) Shall:

(i) Be designed, on the best scientific evidence available, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(ii) Take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened;

(iii) Recognize and give effect to the special interest of coastal States in straddling fish stocks and highly migratory fish stocks on the high seas;

(iv) Be designed so as not to have an adverse impact on straddling fish stocks and highly migratory fish stocks within the jurisdiction of coastal States;

(v) Be consistent with the conservation and management measures applied by the relevant coastal State or States within their exclusive economic zones;

(b) And shall include:

(i) Continuous scientific review and assessment of the state of stocks;

(ii) Provisions to ensure that fishing effort is commensurate with total allowable catches and quotas, as appropriate;

(iii) Establishment of minimum mesh sizes;

(iv) Promotion of the development and use of selective fishing gear and practices that minimize waste;

(v) Provisions to ensure that fishing activities on the high seas avoid overfishing of non-target species caught incidentally, and to minimize the wastage of such non-target or incidental catches;

(vi) Full, detailed, timely and accurate reporting of catches and effort (number of vessels and fishing days);

(vii) Provisions to ensure effective surveillance and control with respect to fishing activities.

## IV. SURVEILLANCE AND CONTROL MEASURES

In order to ensure effective conservation and management, with due regard to the particular circumstances in individual regions, measures to ensure effective surveillance and control shall include:

(a) A uniform and internationally recognizable vessel marking system, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels;

(b) Regular inspections at sea;

(c) Aerial surveillance;

(d) Locational transponders on each fishing vessel or monitoring of vessel operations by satellite;

(e) On-board observers;

(f) Regular hailing of catches either by radio or using computer technology;

(g) Catch verification and validation through dockside monitoring of landed catches and market statistics;

(h) Arrangements with the relevant coastal State for the use or sharing of its resources for aerial surveillance, inspection platforms and observers with a view to minimizing costs for both the regional fisheries conservation organization or arrangement and the coastal State concerned;

(i) Provision for appropriate resources to monitor vessel location and catches, and to detect infractions of applicable conservation and management measures, including those in respect of quotas;

(j) Authorization of fishing effort commensurate with quota or catch shares;

(k) Licensing of vessels for specific quotas;

(l) Rules for the provision of timely and accurate catch and effort data.

## V. ENFORCEMENT

### A. Flag State authorization

With respect to vessels entitled to fly their flag, States shall:

(a) Establish and operate a licensing system to authorize such vessels to fish on the high seas and require such vessels fishing on the high seas to carry the licence;

(b) Provide for information to be contained in fishing licences sufficient to enable States to fulfil their obligations;

(c) Prohibit in national legislation fishing on the high seas by such vessels without a licence.

### B. Offences by vessels or nationals

States shall take such measures as may be necessary to ensure that their nationals or vessels entitled to fly their flag do not engage in any activity which contravenes applicable conservation and management measures, including:

(a) The enactment of domestic legislation, making it an offence to fish in any regulatory area of a regional fisheries conservation organization or arrangement contrary to applicable conservation and management measures;

(b) The investigation of suspected infractions;

(c) The initiation of compliance action (e.g., warnings, orders, directions, injunctions, prosecutions) consistent with the nature of the infraction;

(d) The establishment of penalties commensurate with the seriousness of the offence so as to constitute an effective deterrent against future infractions, including fines related to the value of the vessel, seizure of the catch, fishing equipment or vessel, and suspension or loss of licences;

(e) The expeditious prosecution of their nationals or vessels entitled to fly their flag where there are reasonable grounds to believe that they have contravened applicable conservation and management measures and, upon conviction of an offender, the imposition of penalties proportionate to the nature and gravity of the offence.

## C. Port State enforcement

When a vessel is in a port of a State whose flag it is not entitled to fly, that State shall, to the extent practicable, exercise its right under international law to inspect the documents of that vessel. Such inspection shall also be carried out at the request of any other State. If, as a result of such inspection or other evidence, the State in question has reasonable grounds to believe that the vessel has contravened applicable conservation and management measures or has fished on the high seas without a licence, it shall so inform the flag State and the requesting State, if any, and may detain the vessel until such time as the port State and the flag State agree on the action to be taken.

## D. Boarding, inspection and arrest on the high seas

The appropriate authorities of any State may board, inspect and arrest a vessel entitled to fly the flag of another State in areas of the high seas subject to applicable conservation and management measures when there are reasonable grounds to believe that such a vessel has contravened such measures. The arresting State shall notify the flag State of the action taken and shall detain the vessel pending appropriate action by the flag State or, with the latter's consent, by the arresting State.

## E. Enforcement against unregistered vessels

When a vessel not entitled to fly the flag of any State is found fishing in an area of the high seas subject to applicable conservation and management measures, the appropriate authorities of any State may take such action as is necessary to arrest the vessel and prosecute it. Such State shall detain the

crew only for the time necessary to bring the arrested vessel to its nearest port and to complete its investigations. It shall expeditiously carry out all relevant investigations and judicial proceedings. It shall as soon as practicable inform the State or States of which the crew are nationals of the action taken.

### F. Enforcement against vessels that conceal their identification

When a vessel is sighted fishing in an area of the high seas subject to applicable conservation and management measures by the appropriate authorities of a State which conclude that the vessel is concealing its identification or indicating a registry to which it does not belong, that State may take such action as is necessary to board the vessel and, if appropriate, arrest it, and to detain the vessel until such time as it is identified and the registry to which it belongs is determined. If the vessel is found to be entitled to fly the flag of a State, it may be further detained pending corrective action by the flag State or, with the latter's consent, by the arresting State. If the vessel is found to be unregistered, enforcement procedures shall be carried out accordingly.

### G. International cooperation

States shall enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis. They shall, in particular:

(a) Assist each other in the determination of the registry of vessels reported to have engaged in activities contravening applicable conservation and management measures, based on information to which they have access;

(b) Establish and maintain effective arrangements for obtaining, preserving and transmitting evidence to prosecuting authorities;

(c) Provide to the port State, upon request, information to which they have access and all other reasonable assistance.

## VI. SETTLEMENT OF DISPUTES

(a) In the event of a dispute, the States concerned shall seek a settlement through consultation, negotiation, mediation or other peaceful means of their own choice;

(b) If, 30 days following receipt of notification by one State to one or more other States that a dispute exists between or among them, the States concerned have not been able to settle their dispute through the means referred to in subparagraph (a):

(i) Where the United Nations Convention on the Law of the Sea has entered into force for all States concerned, Part XV of the Convention shall apply;

(ii) Where the United Nations Convention on the Law of the Sea has not entered into force for all States concerned, if they do not agree to settle the dispute in accordance with Part XV of the Convention the dispute shall be submitted, at the request of any concerned State, to arbitration in accordance with the provisions of the appendix to the present papers.

Appendix

ARBITRATION

1. A request for arbitration shall be made to the Secretary-General. The other State or States involved in the dispute shall be notified of this request. Following such a request, an arbitral tribunal shall be constituted by the Secretary-General to decide on the dispute.

2. The tribunal shall be composed of three members. States concerned shall, within 10 days of the date on which the request is transmitted pursuant to paragraph 1, each appoint one member of the tribunal. In the event that more than two States are involved in the dispute, the States sharing similar views on the questions to be considered shall seek to agree on the appointment of a common member of the tribunal.

3. If the members of the tribunal are not appointed pursuant to paragraph 2 within the 10-day period it specifies, the Secretary-General of the United Nations shall, within 10 days, appoint them.

4. The two members thus appointed shall then select a third member, who shall be the Chair. In the event the two members are unable within 10 days of the appointment of the second member to appoint the third, the Secretary-General shall, within 10 days of the end of the latter period, appoint the third member of the tribunal, who shall not be a national of any of the States involved in the dispute.

5. Within 10 days of the formation of the tribunal, the States concerned shall file with the tribunal a memorandum, copies of which shall be transmitted to all States concerned.

6. An oral hearing shall be convened at a place and on a date to be determined by the tribunal, within 30 days following the formation of the tribunal.

7. Decisions of the tribunal shall be final and binding. They shall be taken by a majority of the members of the Tribunal.

8. The tribunal shall communicate its decision to all States concerned within 30 days of the end of the oral hearing. Reasons in writing shall be communicated to the States concerned within 60 days of the decision.

9. If a dispute has been duly submitted to the tribunal, the tribunal may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the States concerned or to prevent damage to the stocks in question, pending a final decision.

10. The Tribunal shall adopt such rules of procedure as it deems necessary.

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